

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sarah Brannen	Team: Team # 8	CCRB Case #: 200205513	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 08/12/2002 9:50 PM	Location of Incident: Madison St & Marcus Garvey Blvd	Precinct: 81	18 Mo. SOL 2/12/2004	EO SOL 2/12/2004	
Date/Time CV Reported Mon, 08/19/2002 10:23 AM	CV Reported At: Precinct	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/19/2002 10:23 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Scott Henderson	05363	915880	PSA 3
2. POM Zoilo Encarnacion	19524	921317	PSA 3
3. POM Michael Cruz	08331	921247	PSA 3

Officer(s)	Allegation	Investigator Recommendation
A.SGT Scott Henderson	Abuse: SGT Scott Henderson stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.SGT Scott Henderson	Discourtesy: SGT Scott Henderson spoke rudely to § 87(2)(b)	
C.SGT Scott Henderson	Abuse: SGT Scott Henderson threatened to arrest § 87(2)(b)	
D.SGT Scott Henderson	Discourtesy: SGT Scott Henderson acted rudely toward § 87(2)(b)	
E.POM Zoilo Encarnacion	Abuse: PO Zoilo Encarnacion threatened to issue a summons to § 87(2)(b)	
F.POM Michael Cruz	Abuse: PO Michael Cruz threatened to issue a summons to § 87(2)(b)	

Synopsis

On August 12, 2003 § 87(2)(b) and § 87(2)(b) drove home on Marcus Garvey Boulevard from § 87(2)(b) mother's house. At about 9:50 p.m. they were stopped by an unmarked police car carrying Sgt. Henderson, PO Cruz, and PO Encarnacion. As PO Cruz and PO Encarnacion asked § 87(2)(b) for his license and registration and other questions pertaining to his driving, Sgt. Henderson and § 87(2)(b) engaged in a conversation that quickly escalated to an argument. § 87(2)(b) alleged that Sgt. Henderson spoke discourteously to her and threatened to arrest her. § 87(2)(b) exited the vehicle to continue speaking with PO Cruz and PO Encarnacion while § 87(2)(b) continued to exchange words with Sgt. Henderson. § 87(2)(b) alleged that he attempted to intervene on behalf of his wife, prompting Sgt. Henderson to storm over toward him in an intimidating manner and instruct him to address him as Sergeant. § 87(2)(b) upset by the encounter with these officers, called 911 to request a patrol car or patrol supervisor to diffuse the situation. § 87(2)(b) alleged that PO Cruz and PO Encarnacion threatened to issue him a summons if he did not calm his wife. When Sgt. Henderson overheard § 87(2)(b) state while on her cellphone that he had refused to identify himself, Sgt. Henderson offered his name and shield number. § 87(2)(b) ended her call and the officers left. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) and his wife, § 87(2)(b) filed their civilian complaint in person at the 81st precinct on August 13, 2002. Both complainants hand wrote their statements at the command, which were then forwarded to the CCRB on August 19, 2002. (enc.2A-2E, 3A-3F) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) was interviewed by the CCRB on September 6, 2002. (enc. 7A-7B) On August 12, 2002 at approximately 9:30 p.m. § 87(2)(b) and her husband, § 87(2)(b) were driving home from her mother's house. § 87(2)(b) received a call on his cell phone. He pulled the vehicle to the side of the road near a Chinese Restaurant to answer the call. § 87(2)(b) noticed a detective's car on the other side of the street, facing in the opposite direction. The detective's car seemed to be leaving, but stopped and reversed when the § 87(2)(b) car stopped. After § 87(2)(b) finished his phone call he pulled out onto the road and continued on their way, away from the detective's car. About two blocks later, at the corner of Monroe and Marcus Garvey Boulevard, the detective's car pulled up behind them with the lights flashing. § 87(2)(b) immediately pulled the vehicle to the side of the road. (**Allegation A**)

One officer, later identified as Sgt. Henderson, approached the passenger side of the vehicle and two officers, later identified as PO Cruz and PO Encarnacion, approached the driver's side of the vehicle. One officer asked § 87(2)(b) for his license and registration, which he provided. The officer asked if § 87(2)(b) had been driving that vehicle all day, if there was anything wrong with the car, and if there were any guns in the car. § 87(2)(b) asked why the officers had stopped him. The officer told him to wait, that he would explain. The officer then asked if § 87(2)(b) had been drinking. § 87(2)(b) exited the car and continued answering the officers' questions.

While § 87(2)(b) was talking to PO Cruz and PO Encarnacion, § 87(2)(b) asked Sgt. Henderson why they were being stopped and where the officers were from. Sgt. Henderson told her that they were from "housing." § 87(2)(b) asked him to specify further, but he curtly replied, "just housing." § 87(2)(b) told him that she used to be on the job and that her mother was on the job also. Sgt. Henderson asked her, "What happened; you couldn't handle it?" § 87(2)(b) responded "Wouldn't you like to know?" § 87(2)(b) again asked the man what precinct he was from and for his shield number. She explained that "they don't teach you to talk like that on the job." Sgt. Henderson replied, "You're the one acting like an idiot." (**Allegation B**) § 87(2)(b) surprised by his rude remark, told him that his comment was unprofessional and that he was the one being an idiot. § 87(2)(b) called her mother who works for the police department. She told her mother that they were being stopped. She told her mother, "I can't believe this shit!" Sgt. Henderson told her, "If you curse again I'm going to pull you out of the car and I'm going to lock you up." (**Allegation C**)

§ 87(2)(b) hearing the conversation between his wife and the officer, asked Sgt. Henderson, “Excuse me Sir, why are you speaking to my wife like that?” The officer became upset and declared, “Don’t address me as Sir, address me as my title. My title is Sergeant!” (**Allegation D**) The officer pulled his shield out walking toward § 87(2)(b) as if to intimidate him. Sgt. Henderson put his shield inside his shirt again. § 87(2)(b) exited the vehicle and asked, “Oh, you’re a Sergeant? That’s how you lead by example?” § 87(2)(b) turned away from Sgt. Henderson, stating, “I’m not going to even deal with him.” and continued talking to the other two officers. PO Cruz and PO Encarnacion told § 87(2)(b) that he looked like he was drinking. § 87(2)(b) denied having consumed any alcohol, offering to take a field test and telling them to smell his breath. § 87(2)(b) stated several times, “I want his shield number.” § 87(2)(b) told her to calm down.

§ 87(2)(b) became upset, started crying, and called 911 to request a patrol supervisor because she felt that Sgt. Henderson was “getting out of line.” She walked to the corner to obtain the address of their location. PO Cruz and PO Encarnacion, laughingly, told § 87(2)(b) that if he didn’t control his woman they would give him a summons. (**Allegations E and F**) § 87(2)(b) told her again to calm down or else they would receive a summons. § 87(2)(b) told him that there was no offense for which they could receive a summons. She assured him that she would get a patrol supervisor. § 87(2)(b) told the 911 operator that there were officers stopping them and not providing their names and shields. When Sgt. Henderson heard § 87(2)(b) on the phone with 911 he told her that he never refused to provide his shield number and then pulled it out from his shirt again. § 87(2)(b) wrote down the shield number, 5363. The officers never fully explained to § 87(2)(b) or § 87(2)(b) why they had stopped them or given them any specific reason for issuing a summons. § 87(2)(b) believes they were stereotyped because she and her husband look younger than they are and drive a nice Chevrolet Tahoe with rims.

§ 87(2)(b)

On December 17, 2002 § 87(2)(b) viewed photographs of possible subject officers. (7C-7I) She positively identified Sgt. Henderson as the officer who called her an idiot and charged at her husband, demanding that he be addressed as Sergeant. § 87(2)(b) also placed PO Encarnacion at the scene, but could not determine whether PO Cruz or PO Torres was at the scene. She stated that she could not recall the third officer’s face because he spoke most directly with her husband.

In a telephone conversation on March 25, 2003 § 87(2)(b) stated that during the incident she went into a store on the corner to get a pen to record Sgt. Henderson’s name and shield number.

§ 87(2)(b)

§ 87(2)(b) was interviewed by the CCRB on September 6, 2002. (enc. 6A-6B) On August 12, 2002 § 87(2)(b) was driving home in his Chevrolet Tahoe. He had just turned onto Marcus Garvey Boulevard when he received a call on his cell phone. He pulled his truck over to the side of the road at the corner of Lexington Avenue to answer the call. § 87(2)(b) had been stopped by the side of the road near a Chinese Restaurant for about three minutes when he observed an unmarked police car reverse toward him. They did not confront him so § 87(2)(b) pulled out and proceeded in the direction he was headed. § 87(2)(b) had traveled about four blocks when the police car came up behind them with lights flashing. § 87(2)(b) immediately pulled his car to the side of the road. (**Allegation A**)

Three plainclothes officers approached the truck. The front passenger of the police car, who § 87(2)(b) identified as Sgt. Henderson, approached the passenger side of his truck. The driver of the police car, who had his shield around his neck and § 87(2)(b) described as an “Indian looking man, about 5’11” to 6’1” tall, in his late twenties or early thirties, wearing a blue shirt and jeans,” later identified as PO Encarnacion, approached the driver’s side of the truck. The rear passenger of the police car, described by § 87(2)(b) as a male white, 5’7”- 5’10” tall, about twenty seven to thirty one years old, and wearing a dark bandana on his head, later identified as PO Cruz, also approached the driver’s side of the car. PO Encarnacion instructed § 87(2)(b) to turn off his engine and asked for § 87(2)(b) license and registration. § 87(2)(b) asked why he was being pulled over. PO Encarnacion told him he would explain after § 87(2)(b) provided his documents, so § 87(2)(b) complied. After taking his papers, PO Encarnacion asked § 87(2)(b) if he had been driving that vehicle all day and if there was anything wrong with it.

§ 87(2)(b) asked the officer on her side of the truck, identified as Sgt. Henderson, what precinct he and the other officers were from. Sgt. Henderson became sarcastic and evaded the question. § 87(2)(b) told him that he shouldn't talk to people like that. Sgt. Henderson told her, "Well, you're the one acting like an idiot." (**Allegation B**) § 87(2)(b) called him an idiot back.

PO Encarnacion and PO Cruz asked § 87(2)(b) to get out of the truck and walk to the back of the truck. They asked him if he had anything in the truck he shouldn't. § 87(2)(b) told them no, explaining that he has a good job that he wouldn't put that in jeopardy. Sgt. Henderson and § 87(2)(b) continued to have words with one another. § 87(2)(b) asked Sgt. Henderson, "Excuse me Sir, why are you talking to my wife like that?" Sgt. Henderson charged toward § 87(2)(b). He told § 87(2)(b) "Don't address me as Sir. Address me as Sergeant!" (**Allegation D**) § 87(2)(b) turned to the other two officers and told them, "I don't even want to talk to him because he's being disrespectful." The other officers threatened to issue § 87(2)(b) a summons if his wife didn't calm down. § 87(2)(b) told his wife to calm down because he did not want to receive a summons. PO Cruz told § 87(2)(b) that he can't control his wife and that she was "playing him." (**Allegation E and F**) Then PO Encarnacion agreed that § 87(2)(b) "can't control his wife." PO Cruz and PO Encarnacion told § 87(2)(b) that he appeared to be drinking. § 87(2)(b) asked them if he smelled like he was drinking. He offered to take a field test but the officers never got their equipment.

§ 87(2)(b) exited their vehicle to call 911 because Sgt. Henderson refused to provide his name and shield number and was disrespectful. When Sgt. Henderson heard § 87(2)(b) call 911 he offered his shield number. § 87(2)(b) did not ask the other officers for their shield numbers and he noted that PO Encarnacion had his shield displayed. PO Encarnacion returned § 87(2)(b) license and registration and the officers got back in their car and left. The officers never checked § 87(2)(b) information from the police car, issued him summons, or even explained fully why they had stopped him.

§ 87(2)(b) could not state exactly how long they had been stopped, but it was long enough that his car battery died because he had left the running lights on.

§ 87(2)(b) was shown officer photographs on December 17, 2002. (6C-6I) He identified Sgt. Henderson by name when viewing his photograph. § 87(2)(b) wrote on the copy of the photograph that Sgt. Henderson called § 87(2)(b) an idiot because she asked which precinct he was from. § 87(2)(b) reiterated his earlier allegation that Sgt. Henderson initially resisted providing his name and shield and became upset when § 87(2)(b) called him "Sir." § 87(2)(b) identified PO Encarnacion as the officer who approached the driver side of the car and later threatened to issue him a summons if he did not keep his wife quiet. § 87(2)(b) improperly chose PO Torres, who was not at the scene of the incident, as the third officer present who wore a bandana. He stated this third officer also commented on his wife's behavior and threatened to issue him a summons.

Results of Investigation

Civilian Statements

After receiving the call details for § 87(2)(b) Nextel account, it was determined that § 87(2)(b) spoke with her mother, § 87(2)(b), and her sister, § 87(2)(b), individually during the incident. Because they were not direct witnesses to the incident, they were contacted by the CCRB via telephone to confirm their telephone numbers and to ask them to recount their conversations with § 87(2)(b) (see IAs). § 87(2)(b) stated that her daughter, § 87(2)(b) had called her from the road where she and her husband were stopped by police officers. § 87(2)(b) was crying to her mother and told her the officers were being rude to her and her husband and had accused § 87(2)(b) of drinking. The officers refused to explain why they had stopped them. § 87(2)(b) then told her mother that one of the officers had called her an idiot and threatened to pull her out of the car and lock her up. § 87(2)(b) told her daughter to call for a Sergeant and to calm down. § 87(2)(b) told her mother that she would write down the officers' names and shield numbers.

§ 87(2)(b) stated that she was on the phone with her sister at the time of the incident as well, although § 87(2)(b) had called her on a different telephone line. As the officers spoke with § 87(2)(b) and § 87(2)(b) § 87(2)(b)

relayed their comments to her sister. She told her sister that one of the officers called her an idiot and threatened to pull her out of the car if she didn't "stop running her mouth." § 87(2)(b) also told her sister that the officers told § 87(2)(b) that "he better calm his wife" and accused him of drinking.

Officer Statements

Sgt. Scott Henderson

Sgt. Henderson was interviewed on January 30, 2003. (enc. 8A-8C) Sgt. Henderson worked a 1726x0210 tour as the Anti-Crime supervisor at PSA 3 on August 12, 2002. He was in plainclothes and assigned an unmarked Chevy Lumina with PO Cruz and PO Encarnacion, which PO Encarnacion operated. Sgt. Henderson sat in the front passenger seat. Sgt. Henderson has since been transferred to IAB and misplaced his memo book with entries from the date of the incident. The officers were on their way from Roosevelt Houses to Stuyvesant Garden Houses when they first observed § 87(2)(b) and § 87(2)(b) vehicle on Marcus Garvey Boulevard, a one way street that runs south. They observed the SUV in front of them, swerving back and forth across the road. The officers followed § 87(2)(b) until he pulled over to the curb suddenly without signaling. The officers passed him. As soon as they passed the § 87(2)(b) vehicle, he attempted to make a left turn the wrong way on a one way street. § 87(2)(b) did not complete the turn, but proceeded straight, behind the officers' car. Sgt. Henderson thought § 87(2)(b) actions suspicious, as though he were attempting to avoid them. The officers allowed § 87(2)(b) to pass so that they could conduct a vehicle stop.

They put their lights on and the SUV immediately pulled to the side of the road. PO Encarnacion and PO Cruz approached the driver's side and Sgt. Henderson approached the passenger side of the § 87(2)(b) vehicle. Because the windows were tinted, Sgt. Henderson asked the female passenger, § 87(2)(b) to roll down her window. PO Cruz and PO Encarnacion requested § 87(2)(b) license and registration. § 87(2)(b) became loud and "appeared to be very angry." She told § 87(2)(b) not to comply with the officers' request for his license and registration because she disagreed with the vehicle stop. She stated that the reason the officers had stopped them was because they drove a jeep and were jealous because they just had regular cars. Sgt. Henderson responded that her statement was "ridiculous," because they have "better things to do than that." § 87(2)(b) stated that she was a § 87(2)(b), that she knew her rights, and did not agree with why they had been stopped. § 87(2)(b) He told her that he is a "New York City Police Sergeant" and has a job to do. Sgt. Henderson further told § 87(2)(b) "§ 87(2)(b) You know how difficult it is. If someone made a statement like that to you, that would sound ridiculous. You would think that was an idiotic statement for someone to make." § 87(2)(b) then got very angry, accusing Sgt. Henderson of calling her an idiot. She threatened to call § 87(2)(b) and file a complaint. Sgt. Henderson denied that he had called her an idiot and told her to "go ahead and make a complaint." He told her that many people don't agree with being stopped by officers, but that she should wait until they were done with their business and then allow the officers to explain why they had stopped them. § 87(2)(b)

PO Cruz told § 87(2)(b) to calm his girlfriend down and tell her to be quiet because they were talking to him. § 87(2)(b) told § 87(2)(b) not to say anything and go into the store. He stated that he would deal with the officers because he hadn't done anything wrong. Normally, Sgt. Henderson would not allow someone to leave the scene, but he thought it best for § 87(2)(b) to remove herself from the situation. § 87(2)(b) then got out of the vehicle and went into the store, declaring she would call § 87(2)(b) Meanwhile, PO Cruz and PO Encarnacion stood outside the § 87(2)(b) vehicle with § 87(2)(b) They examined § 87(2)(b) license and registration. Sgt. Henderson directed PO Cruz and PO Encarnacion to explain why he was stopped. They told him that he was stopped because he attempted to turn the wrong way down a one way street and was driving erratically. They wanted to ensure he was not intoxicated. § 87(2)(b) explained that he did not know the street only ran one direction. Sgt. Henderson accepted this response, especially considering § 87(2)(b) seemed coherent, reasonable, and walked without difficulty. Sgt. Henderson asked him if he was satisfied with their reasons for stopping him. He said that he was. § 87(2)(b) came out of the store five minutes later, speaking to someone on the phone. She stated to the person on the phone that the officers were leaving without providing their names and shield numbers. § 87(2)(b) never asked for any of the officers' names or shield numbers before she exited the store. Sgt. Henderson, who had been on his

way back to the car, turned around. He told § 87(2)(b) that they had spoken with her boyfriend, who stated that he was satisfied. He then pulled his shield out of his shirt and told her his name. § 87(2)(b) asked if he worked in the 81st precinct. He told her no and then turned to § 87(2)(b) and asked § 87(2)(b) if he also wanted his name and shield number. § 87(2)(b) said that he didn't, so Sgt. Henderson and the other officers got back into their car and left.

From Sgt. Henderson's interpretation of his conversation with § 87(2)(b) § 87(2)(b) was upset that he was a Sergeant and that they were police officers. Sgt. Henderson was asked if he ever told § 87(2)(b) "Don't address me as Sir. Address me as Sergeant." He replied, "I am a Sergeant. When I'm conducting something in the street, I address people appropriately and I expect to be addressed as such. If you call me an officer, I'm a Sergeant. That's my rank. That's how I ask you to address me." However, he could not specifically recall if he actually told § 87(2)(b) to address him as Sergeant.

Sgt. Henderson was interviewed again on April 4, 2003. (enc. 8D-8E) Sgt. Henderson reiterated his reason for stopping the § 87(2)(b) vehicle. He first observed the § 87(2)(b) vehicle as they drove southbound on Marcus Garvey Boulevard. He could not recall on to which street § 87(2)(b) attempted to make a left turn. He could not recall how many blocks they had traveled before finally stopping them on the corner of Madison Street. He estimated the entire stop lasted about fifteen to twenty minutes. Sgt. Henderson never observed § 87(2)(b) on her cell phone while in the vehicle. He could not recall the exact words § 87(2)(b) used, but stated that she was cursing him and arguing about their decision to stop them. She told § 87(2)(b) that she knew her rights and that he did not have to comply by providing his license and registration. Sgt. Henderson told § 87(2)(b) that her curses were not necessary and asked her to stop. He denied that he ever threatened to pull her from the car and arrest her. He "may have informed her" that her actions bordered on Obstruction of Government Administration and Disorderly Conduct because she told her boyfriend not to comply and people on the street were "being nosy." Sgt. Henderson admitted later that the people on the street were not a threat and were probably just interested in the police activity in general; he could not state with certainty that § 87(2)(b) actions began to draw a crowd. He merely advised that her actions were bordering disorderly.

§ 87(2)(b) was "rambling" about her time on the police force and her decision to leave. Because she became upset Sgt. Henderson decided not to ask her about it. When asked if he ever stated to § 87(2)(b) "What was the matter? You couldn't handle it?" Sgt. Henderson stated that he may have asked her what happened. He asked her about how she had handled similar situations when she was an officer.

§ 87(2)(b) took the initiative to calm his wife and suggested that she go into the store. Sgt. Henderson never heard PO Cruz or PO Encarnacion interject into the conversation between § 87(2)(b) and § 87(2)(b) or address § 87(2)(b) directly. § 87(2)(b) exited the vehicle first and immediately went into the store. § 87(2)(b) stepped out of the car because he could not find the registration to the car and asked to exit the vehicle so he could look under the seat and in the console. Neither PO Cruz nor PO Encarnacion threatened § 87(2)(b) with a summons because "there was no need to."

Sgt. Henderson first observed § 87(2)(b) on her cell phone when she exited the store. He did not know who she was speaking to at that time and had no knowledge of her calling 911.

PO Michael Cruz

PO Michael Cruz, a § 87(2)(b) year old, 5'8" tall, light skinned male Hispanic assigned to PSA 3, was interviewed by the CCRB on March 14, 2003. (enc. 9A-9D) He made no memo book entries regarding the incident and could not recall his interaction with § 87(2)(b) and § 87(2)(b). PO Cruz still could not recall the incident even after receiving a description of § 87(2)(b) and § 87(2)(b) and more detailed information about the allegations.

PO Zoilo Encarnacion

PO Encarnacion, a § 87(2)(b) year old, 5'10" tall, darker skinned male Hispanic, assigned to PSA 3 was interviewed by the CCRB on March 14, 2003. (enc. 10A-10D) He had no memo book entries regarding the incident and could not recall the incident. In referring to his memo book he confirmed he worked CONDOR overtime with PO Cruz during an 1800x0235 tour. He ordinarily works CONDOR overtime with PO Cruz, but could not recall working with Sgt. Henderson. After learning more specific details about the allegations, § 87(2)(b) and § 87(2)(b) appearance, and their make and model car, PO Encarnacion still could not recall the incident.

Police Department Documents

The roll call for PSA 8 tour 3 on August 12, 2002 indicates that Sgt. Henderson was assigned vehicle 9585 and worked an 1800 x 0235 tour. The comment section of the roll call indicates he worked patrol near Whitman and Ingersoll. The roll call lists five officers also assigned near Whitman and Ingersoll: PO Torres, O Stockmeier, PO Boverly, PO Cruz, and PO Encarnacion, all of whom worked an 1800 x 0235 tour. Two vehicle numbers appear next to their names, 9259 and 9585, making unclear as to which officer were assigned to which vehicle. (enc. 12A-12H) In a telephone call to roll call, personnel there could not decipher either which officers were assigned to vehicle 9585, although it appeared that PO Cruz and PO Encarnacion were most likely assigned that vehicle. PO Torres' memo book reveals that he was assigned to vehicle 9259, which PO Boverly operated. (enc. 11A-11B) Communications records for the 911 call placed by § 87(2)(b) and any radio transmissions related to the incident were requested, but none were found.

Complainants' Nextel Call Details

At the time of the incident the complainants' subscribed to a Nextel cellular phone account. The call details for August 12, 2002 evidence several calls placed by their phone to several different numbers around the time of the incident. At about 9:38 p.m. a call was placed to 911 and lasted three minutes. (enc. 13A)

Officers' CCRB Histories

Sgt. Henderson has substantiated allegations of Abuse of Authority: Stop and Frisk from CCRB case number 9903758 in his CCRB history for which he received instructions. (enc. 1C)

PO Encarnacion has no substantiated allegations in his CCRB history, but is a subject officer in one other pending CCRB case, number 200207546. (enc. 1B)

PO Cruz has no substantiated allegations in his CCRB history, but is a subject officer in two other pending CCRB cases, numbers 200203737 and 200207546. (enc. 1A)

Complainants' Criminal Histories

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Officer Identification

Both complainants identified Sgt. Henderson by name and his name appeared on the original civilian complaint, originally received at the 81st precinct. According to the roll call, Sgt. Henderson was assigned vehicle 9585 as the supervisor for the area near Whitman and Ingersoll. PO Cruz' and PO Encarnacion's names appear on the last page of the roll call with the vehicle number 9585 hand written between their names. The descriptions of the officers given by the complainants generally match PO Cruz and PO Encarnacion. PO Cruz' memo book also confirmed that he was working with PO Encarnacion and Sgt. Henderson that tour. Also, § 87(2)(b) and § 87(2)(b) both positively identified PO Encarnacion and Sgt. Henderson from their photographs. That PO Torres was not present at the scene of the incident is confirmed by his memo book entries, which show that he worked with PO Boverly that day.

Undisputed Facts

§ 87(2)(b) and § 87(2)(b) were driving their black Chevrolet Tahoe on Marcus Garvey Boulevard when § 87(2)(b) pulled to the side of the road to receive a phone call. As he finished his call he noticed an unmarked police car reverse toward him. Because they did not confront him at that time he pulled back out onto the road and proceeded in the direction he was driving. Within a few blocks Sgt. Henderson, with PO Encarnacion and PO Cruz, stopped § 87(2)(b) vehicle. PO Encarnacion and PO Cruz approached the driver's side of the vehicle while Sgt. Henderson approached the passenger side, where § 87(2)(b) sat. PO Encarnacion asked § 87(2)(b) to turn off his car and furnish his license and registration. He and PO Cruz received the information and began to question § 87(2)(b) about his activities and his vehicle. § 87(2)(b) exited the car and continued to speak with PO Cruz and PO Encarnacion while § 87(2)(b) began to converse with Sgt. Henderson.

Credibility

§ 87(2)(g)

§ 87(2)(b) statement that she made several calls to her mother and to 911 was confirmed by the call details provided by Nextel. § 87(2)(b) was actually connected to 911 for three minutes. § 87(2)(g)

§ 87(2)(g)

Neither PO Cruz nor PO Encarnacion could recall the incident § 87(2)(g)

Sgt. Henderson was interviewed by the CCRB twice, on January 30, 2003 and April 4, 2003. § 87(2)(g)

He was prompted to stop § 87(2)(b) vehicle because he observed him swerving and then pull suddenly to the side of the road without signaling, § 87(2)(g)

§ 87(2)(g)

[REDACTED]

Allegation A

§ 87(2)(b) and § 87(2)(b) expressed incredulity because the officers had stopped them for no apparent reason and refused later to explain their reason for the stop. However, both complainants stated that PO Encarnacion and PO Cruz asked them whether there was anything wrong with the vehicle and whether § 87(2)(b) had been drinking, § 87(2)(g). As Sgt. Henderson explained, he observed § 87(2)(b) swerve and then pull immediately to the side of the road without signaling. § 87(2)(b) explained that he had pulled over to answer a phone call, as driving while using a cellphone without a hands-free headset is now illegal. § 87(2)(g)

[REDACTED]

Allegation B

§ 87(2)(b) § 87(2)(g) explained that Sgt. Henderson was evasive in his answers to her questions, such as his assigned precinct and about the “housing” command in general. He admitted that he classified her remarks as “idiotic,” which he also brought to her attention. § 87(2)(g)

[REDACTED]

Allegation C

§ 87(2)(b) admitted that she had cursed out of frustration with the officers and in the presence of Sgt. Henderson. She also admitted to making comments to Sgt. Henderson, such as “Wouldn’t you like to know?” and “They don’t teach you to talk like that on the job.” and then calling him an idiot in response to his similar comment. Sgt. Henderson stated that this behavior, as he perceived, bordered on disorderly and could classify as an obstruction of government administration (OGA). § 87(2)(g)

[REDACTED]

§ 87(2)(g)

Allegation D

The complainants alleged that at some point in § 87(2)(b) conversation with Sgt. Henderson § 87(2)(b) interjected, asking Sgt. Henderson, “Sir, why are you speaking to my wife like that?” Sgt. Henderson responded by forcefully taking his shield out from inside his shirt, storming over to § 87(2)(b) and yelling, “Don’t address me as Sir, address me as my title. My title is Sergeant!” Sgt. Henderson neither confirmed nor denied whether he made this statement to § 87(2)(b). Rather, when asked he responded, “I am a Sergeant. When I’m conducting something in the street, I address people appropriately and I expect to be addressed as such. If you call me an officer, I’m a Sergeant. That’s my rank. That’s how I ask you to address me.” § 87(2)(g)

Allegations E and F

§ 87(2)(b) alleged that PO Encarnacion and PO Cruz threatened to issue him a summons if he did not calm wife.

§ 87(2)(g)

§ 87(2)(b) indicated that just before the officers had threatened to issue a summons, she walked to the corner with her cellphone to obtain the address of their location and call 911 for a supervising officer to visit the scene. § 87(2)(g)

§ 87(2)(b) In his first statement, Sgt. Henderson explained that PO Cruz asked § 87(2)(b) to calm his wife down so that he and the other officers could speak to him. In his second statement, Sgt. Henderson denied that PO Cruz or PO Encarnacion had ever interjected, but rather allowed § 87(2)(b) proactively to ask his wife to go into the store to calm down. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: